

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL JAY PEREZ,

Plaintiff,

v.

GREY et. al,

Defendants.

CASE NO. 2:21-CV-0095-JLR-DWC

ORDER

Plaintiff proceeding *pro se* and *in forma pauperis*, filed this civil rights Complaint pursuant to 42 U.S.C. § 1983. Presently pending before the Court is Plaintiff's First Proposed Amended Complaint, which the Court construes as a Motion to Amend ("Motion"). Dkt. 8.

On January 26, 2021, Plaintiff initiated this lawsuit by filing a Motion to Proceed *In Forma Pauperis* ("IFP") and the Complaint. *See* Dkt. 1, 1-1. The Court granted the Motion to Proceed IFP on February 10, 2021. Dkt. 4. The same day, the Court directed service of the Complaint. Dkt. 5. On February 17, 2021, Plaintiff filed the Motion. Dkt. 8.

Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure,

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Here, Plaintiff filed the Motion and First Proposed Amended Complaint within 21 days of service and prior to the filing of a responsive pleading. *See* Docket. This is Plaintiff's first Amended Complaint. Therefore, Plaintiff has the right to file the Amended Complaint as a matter of course. "When the plaintiff has the right to file an amended complaint as a matter of course, [] the plain language of Rule 15(a) shows that the court lacks the discretion to reject the amended complaint based on its alleged futility." *Thomas v. Home Depot U.S.A., Inc.*, 2007 WL 2140917, * 2 (N.D. Cal. July 25, 2007) (quoting *Williams v. Board of Regents of University System of Georgia*, 477 F.3d 1282, 1292 n. 6 (11th Cir. 2007)). Accordingly, Plaintiff's Motion is granted, and the Court accepts the First Amended Complaint.

Dated this 11th day of March, 2021.



David W. Christel
United States Magistrate Judge